

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 06F-BD051-BNK

3 **AMERICAN MORTGAGE GROUP, INC.**  
4 **AND MARK R. BUSARD, PRESIDENT**

8630 E. Via De Ventura, Suite 220  
Scottsdale, AZ 85258

**CONSENT ORDER**

5  
6 Petitioners.

7  
8 On June 14, 2006, the Arizona Department of Financial Institutions ("Department") issued a  
9 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter  
10 in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact and  
11 Conclusions of Law, and consent to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Petitioner American Mortgage Group, Inc. (hereinafter "AMG") is an Arizona corporation  
14 authorized to transact business in Arizona as a mortgage banker, license number BK 0905839,  
15 within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of AMG's business is that of making,  
16 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by  
17 Arizona real property within the meaning of A.R.S. § 6-941(5).

18 2. Petitioner Mark R. Busard ("Mr. Busard") is the President of AMG and is authorized to  
19 transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as  
20 outlined within A.R.S. § 6-943(F).

21 3. AMG and Mr. Busard are not exempt from licensure as a mortgage banker within the  
22 meaning of A.R.S. §§ 6-942 and 6-941(5).

23 4. A November 30, 2005 examination of AMG, conducted by the Department, revealed that  
24 AMG and Mr. Busard:

- 25 a. Failed to use its name and license number, as issued on the its principal place of  
26 business license, within all regulated advertising in three (3) advertisements or

1 solicitations and failed to include all federal and state of Arizona required disclosures in  
2 all regulated advertising in two (2) advertisements or solicitations; specifically:

- 3 i. "Interest Rates are Rising" (advertisement)—missing BK number;
- 4 ii. "BK Payoff Notification" (letter)—BK number is missing;
- 5 iii. "House for Sale offered at only \$230,000"—BK number is missing;
- 6 iv. "Great Jumbo Refinancing" (advertisement)—BK number is missing;
- 7 v. "Get a Mortgage and Get Away" (advertisement)—BK number is
- 8 missing; and
- 9 vi. "Integrity in Lending ... Rochelle Hilland"—BK number is missing;

10 b. Failed to conduct the minimum elements of reasonable employee investigations  
11 before hiring employees; specifically:

- 12 i. Failed to obtain a signed and dated statement attesting to all of an
- 13 applicant's felony convictions, including detailed information
- 14 regarding each conviction before hiring at least two (2) employees;
- 15 ii. Failed to consult with the applicant's most recent or next most recent
- 16 employer before hiring at least nineteen (19) employees;
- 17 iii. Failed to inquire regarding an applicant's qualifications and
- 18 competence for the position before hiring at least nineteen (19)
- 19 employees;
- 20 iv. Failed to obtain a credit report before hiring or failed to investigate
- 21 further as to the applicant's honesty, truthfulness, integrity, or
- 22 competence before hiring at least fifteen (15) employees;
- 23 v. Failed to obtain a completed employment application before hiring at
- 24 least three (3) employees; and
- 25 vi. Failed to correct this violation from their most previous examination;

26 c. Failed to maintain correct and complete records; specifically:

- i. Petitioners failed to provide three loan files;
  - ii. Petitioners failed to provide trust subsidiary ledgers; and
  - iii. Petitioners failed to identify funds in their trust account;
- d. Failed to employ a written fee agreement signed by all parties in at least four (4) mortgage loan transactions;
  - i. Failed to correct this violation from their most previous examination;
- e. Misused trust funds; specifically:
  - i. Petitioners deposit appraisal fees into a trust account. Petitioners' bank withdraws the monthly service fees from Petitioners' trust account. Petitioner has not replenished these service fees, which causes a shortage in their trust account;
- f. Failed to comply with the disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts; specifically:
  - i. Petitioners placed a 90-day limit on borrowers to request a copy of their appraisal in three (3) mortgage loan transactions;
  - ii. Petitioners provided a defective 1977 Fair Lending Housing Notice to borrowers in three (3) mortgage loan transactions;
  - iii. Petitioners failed to disclose the Yield Spread Premium on the HUD-1 Settlement in at least eight (8) mortgage loan transactions;
  - iv. Petitioners failed to issue: a preliminary Truth in Lending disclosure in five (5) mortgage loan transactions; a preliminary Good Faith Estimate disclosure in five (5) mortgage loan transactions;
  - v. Petitioners failed to issue a proper Form 1003 in three (3) mortgage transactions;

- 1 vi. Petitioners failed to have borrowers sign the Patriot Act statement or  
2 verify identification in two (2) mortgage transactions;  
3 vii. Petitioners failed to complete the dates on five (5) Servicing Transfer  
4 disclosures; and  
5 viii. Failed to correct this violation from their most previous examination;  
6 g. Contracted with or paid compensation to unlicensed, independent contractors;  
7 specifically:  
8 i. JAM Enterprises, \$200.00;  
9 ii. Tina L. Hasemeier, \$400.00;  
10 iii. Top Notch Processing, \$3,321.60;  
11 iv. Innovative Investment, \$1,500.00;  
12 v. Image Productions, \$1,850.00;  
13 vi. Beach Buff, Inc., \$970.00;  
14 vii. Zories, Inc., \$2,575.00;  
15 viii. MiPPi.Biz, \$525.00;  
16 ix. Superior Processing, \$300.00;  
17 x. The Loan Network, \$500.00 and  
18 xi. Juicyleads, \$500.00  
19 h. Failed to maintain their trust subsidiary ledger; specifically:  
20 i. Petitioners failed to maintain a trust subsidiary ledger for each  
21 borrower depositing trust funds;  
22 ii. Petitioners used some of the aforementioned trust funds to pay monthly  
23 account maintenance fees; and  
24 iii. Failed to correct this violation from their most previous examination;  
25 i. Failed to use proper appraisal disclosures; specifically: used unlawful appraisal  
26 disclosures that limit a borrower to 90 days in which the borrower may request a copy

1 of an appraisal for which the borrower has paid;

2 i. Failed to correct this violation from their most previous examination;

3 j. Failed to update and reconcile records; specifically:

4 i. Petitioners bank accounts incurred five (5) shortages from May 31,  
5 2005 through October 31, 2005.

6 5. Based upon the above findings, the Department issued and served upon AMG and Mr.  
7 Busard an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order  
8 ("Cease and Desist Order") on May 2, 2006.

9 6. On May 22, 2006, Petitioners filed a Request For Hearing to appeal the Cease and Desist  
10 Order.

11 CONCLUSIONS OF LAW

12 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to  
13 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,  
14 rules, and regulations relating to mortgage bankers.

15 2. By the conduct set forth in the Facts, American Mortgage Group, Inc. and Mr. Busard  
16 violated the following:

17 a. A.R.S. §§ 6-943(N) and 6-946(E) by failing to use its name and license number, as  
18 issued on the its principal place of business license, within all regulated advertising  
19 and failing to include all federal and state of Arizona required disclosures in all  
20 regulated advertising;

21 b. A.R.S. §§ 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum  
22 elements of reasonable employee investigations before hiring employees;

23 c. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6) by failing to maintain correct and  
24 complete records;

25 d. A.R.S. § 6-946(C) by failing to employ a written fee agreement signed by all parties  
26 in at least four (4) mortgage loan transactions;

- 1 e. A.R.S. § 6-946(C) by Misusing trust funds;
- 2 f. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the
- 3 disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§
- 4 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617);
- 5 and the regulations promulgated under these acts;
- 6 g. A.R.S. §§ 6-947(B) and A.A.C. R20-4-102 by contracting with or paying
- 7 compensation to unlicensed, independent contractors;
- 8 h. A.A.C. R20-4-1806(B)(5) by failing to maintain their trust subsidiary ledger;
- 9 i. A.R.S. § 6-946(C) by failing to use proper appraisal disclosures; and
- 10 j. A.A.C. R20-4-1806(C) by failing to update and reconcile records.

11 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant

12 to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the

13 appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent,

14 to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the

15 imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation

16 of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any other remedy necessary or

17 proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§

18 6-123 and 6-131.

19 **ORDER**

20 1. American Mortgage Group, Inc. and Mr. Busard shall immediately stop the violations

21 set forth in the Findings of Fact and Conclusions of Law. American Mortgage Group, Inc. and Mr.

22 Busard:

- 23 a. Shall use its name and license number, as issued on the its principal place of business
- 24 license, within all regulated advertising and shall include all federal and state of
- 25 Arizona required disclosures in all regulated advertising;
- 26 ...

- 1 b. Shall conduct the minimum elements of reasonable employee investigations before  
2 hiring employees;  
3 c. Shall maintain correct and complete records;  
4 d. Shall employ a written fee agreement signed by all parties in at least four (4)  
5 mortgage loan transactions;  
6 e. Shall not misuse trust funds;  
7 f. Shall comply with the disclosure requirements of Title I of the Consumer Protection  
8 Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C.  
9 §§ 2601-2617); and the regulations promulgated under these acts;  
10 g. Shall not contract with or pay compensation to unlicensed, independent contractors;  
11 h. Shall maintain their trust subsidiary ledger;  
12 i. Shall use proper appraisal disclosures; and  
13 j. Shall update and reconcile records.

14 2. American Mortgage Group, Inc. and Mr. Busard shall immediately pay to the  
15 Department a civil money penalty in the amount of ten thousand dollars (\$10,000.00). American  
16 Mortgage Group, Inc. and Mr. Busard are jointly and severally liable for payment of the civil money  
17 penalty.

18 3. The provisions of this Order shall be binding upon Petitioners, their employees,  
19 agents, and other persons participating in the conduct of the affairs of Petitioners.

20 4. This Order shall become effective upon service, and shall remain effective and  
21 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,  
22 or set aside.

23 SO ORDERED this 24th day of July, 2006.

24 Felecia Rotellini  
25 Felecia A. Rotellini  
26 Superintendent of Financial Institutions

1 CONSENT TO ENTRY OF ORDER

2 1. Petitioners acknowledge that they have been served with a copy of the foregoing  
3 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the  
4 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

5 2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the  
6 foregoing Findings of Fact, Conclusions of Law, and Order.

7 3. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent  
8 is solely to settle this matter and does not preclude this Department, any other agency or officer of  
9 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in  
10 the future, including but not limited to any conduct associated with licensee's Arrowhead Branch  
11 during the period of time from September 1, 2005 to July 15, 2006.

12 4. Mark R. Busard, President, on behalf of American Mortgage Group, Inc. and himself  
13 represents that he is the President, and that, as such, has been authorized by American Mortgage  
14 Group, Inc. to consent to the entry of this Order on its behalf.

15 5. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest  
16 the validity of this Order.

17 DATED this 19 day of July, 2006.

18  
19 By 

20 Mark R. Busard, President  
American Mortgage Group, Inc.

21  
22 ORIGINAL of the foregoing filed this 24<sup>th</sup>  
day of July, 2006, in the office of:

23 Felecia A. Rotellini, Superintendent of Financial Institutions  
24 Arizona Department of Financial Institutions  
ATTN: June Beckwith  
25 2910 N. 44th Street, Suite 310  
26 Phoenix, AZ 85018



1 COPY mailed same date to:


2 Daniel G. Martin, Administrative Law Judge  
3 Office of the Administrative Hearings  
4 1400 West Washington, Suite 101  
Phoenix, AZ 85007

5 Craig A. Raby, Assistant Attorney General  
6 Office of the Attorney General  
7 1275 West Washington  
Phoenix, AZ 85007

8 Robert D. Charlton, Assistant Superintendent  
9 Brenda Fung, Senior Examiner  
Arizona Department of Financial Institutions  
10 2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

11 AND COPY MAILED SAME DATE by  
12 Certified Mail, Return Receipt Requested, to:

13 Mark R. Busard, President  
American Mortgage Group, Inc.  
14 8630 E. Via De Ventura, Suite 220  
Scottsdale, AZ 85258  
Petitioners

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16 964632, CPA06-186